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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,983	01/12/2001	Gabriel Grant Gamache	12929.1009USU1	1033

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EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 12/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/759,983

Applicant(s)

GAMACHE, GABRIEL GRANT

Examiner

Josiah C. Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on response filed 10/9/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. Receipt of applicant's Request for Reconsideration filed 10/9/02 is acknowledged.

### *Drawings*

2. The formal drawings filed 6/11/2001 are accepted by the examiner.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Burnett* (US # 1,546,884) in view of *Wilkening* (US # 4,515,146).

*Burnett* discloses in Figures 1-4 a fireplace having a combustion chamber formed by a firebox and front wall (1) (see Fig. 1), and a closure plate (3) that is pivotally mounted to the front wall about a horizontal axis and in its open position forms a horizontal surface (see Fig. 2 and page 1, lines 44-49). In regard to the limitation of a shelf in claim 1, it would be inherent that the plate (3) in its lowered position (see Fig. 2) would function as a shelf.

*Burnett* possibly does not disclose doors pivotally mounted to the firebox or front wall which serve to enclose the combustion chamber and the front wall and firebox form a substantially air tight seal.

*Wilkening* teaches a fireplace door assembly comprising a front frame portion (10) and doors (15 and 16) pivotally mounted about a vertical axis, wherein the frame may be fastened to or within the opening of a fireplace (see col. 3, lines 57-59). *Wilkening* further teaches the desirability of a gasket (23) to form an effective airtight seal between the doors and the frame (10) (see col. 3, lines 35-57) and the frame and the firebox (see col. 1, lines 30-34 and lines 65-66).

Therefore, in regard to claims 1-6, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the fireplace of *Burnett* to incorporate the frame and pivotal doors and air tight sealing of *Wilkening* for the desirable purpose of providing an easily adjustable means for closing off and effectively air tight sealing the front of the firebox opening.

### ***Response to Arguments***

5. Applicant's arguments filed 10/9/02 have been fully considered but they are not persuasive. Applicant first contends in the response that the mantel (1) of *Burnett* does not constitute a front wall that defines a combustion chamber. However, as shown in Fig. 1 of *Burnett* the mantel (1) surrounds and defines a firebox (not numbered). The front wall of the mantel (pictured in Fig. 1) shows a planar surface that "defines" a front surface of the inset firebox (note shading of firebox in Fig. 1). Although, the firebox is not entirely enclosed by the

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mantel, applicant's claim is not limited to a firebox that is entirely enclosed and, therefore, the limitation of, "a front wall fastened to the firebox wherein the firebox and front wall define a combustion chamber," as recited in applicant's claim 1, does not read over the mantel and firebox disclosed by *Burnett*.

Applicant further contends that the closure (3) of *Burnett* is not shown to cover the opening of the firebox. However, such a limitation does not appear in the claims. Applicant's claim 1 does not limit the shelf to covering an opening of the firebox and is instead drawn to a shelf that is "pivotally mounted to the front wall about a horizontal axis." As noted in paragraph 4 above, the closure (3) of *Burnett* is pivotally mounted to the front wall of the mantel (1) and pivots about a horizontal axis (see Fig. 2). Therefore, this limitation in claim 1 does not read over the pivotally mounted closure (3) of *Burnett*.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc

  
December 18, 2002

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700